



NATIONAL AUTOMOBILE DEALERS ASSOCIATION  
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Legal & Regulatory Group

November 12, 2004

**Via E-Mail**

Federal Trade Commission  
Office of the Secretary  
Room H-159 (Annex W)  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

Re: Franchise Rule Staff Report, R511033

Dear Sir/Madam:

The National Automobile Dealers Association (“NADA”) represents approximately 20,000 franchised automobile and truck dealers who sell new and used vehicles and engage in service, repair and parts sales. Our members employ more than 1.3 million people nationwide. Nearly all of our members have been prospective franchisees and many will be in the future, thus the FTC Franchise Rule (“Rule”) is of great significance to the automobile industry.

NADA submits the following comments in response to the Federal Trade Commission’s (“FTC” or “Commission”) Notice requesting comment on the recommendations published in the FTC Franchise Rule Staff Report (“Staff Report”), released on August 25, 2004.

NADA commends the FTC for taking on the enormous task of revising the Rule, which has remained unaltered since its inception in 1979. In addition, NADA is pleased that the Staff Report and proposed Rule did not suggest the possibility of any specific industry-wide exemption to the Rule. In the past, NADA has submitted commentary to the Commission in response to exemption petitions involving automobile franchises and has consistently opposed an industry-wide exemption from the protections afforded by the Rule. We continue to maintain the position that each exemption petition be reviewed on a case by case basis.

NADA appreciates the Commission’s efforts to clarify exemptions to the Rule by proposing to create a distinct exemptions section in the revision, rather than relying on the definitions section, where it was previously located. However, the staff recommendation to add new exemptions raises some concern, particularly proposed section 436.8(a)(5), which involves new “sophisticated investor” exemptions. In the past, large automobile franchises (ie. Porche Cars North America, Inc. and Mercedes Benz of North America, Inc.) have petitioned the FTC under Section 18(g) of the FTC Act, for exemption from the Rule. It is NADA’s general practice to

thoroughly review each petition individually, prior to submitting any response commentary to the Commission, whether we choose to support or not support the petition. In 1992, Porche Cars North America, Inc. ("Porche") filed a petition for exemption from the Rule, based on the claim that its prospective dealers were extremely sophisticated business people and that they had adequate time to review the franchise agreement and additional restrictions. In this instance, although NADA agreed that automobile dealers were sophisticated in comparison with other franchisees, we argued that dealers remained at a competitive disadvantage when compared to an international company as large and sophisticated as Porche. NADA felt that it was in the public interest for dealers to receive the information required by the Rule and requested that Porche's petition for exemption be denied.

Although the Staff Report recommends the adoption of proposed section 436.8(a)(5)(i), which outlines the large investment exception, we ask the Commission to reconsider the recommendation. Our members vary tremendously in size and sophistication. Since most automobile dealer franchise agreements involve investments amounts greater than \$1 million dollars, the staff recommended threshold amount of \$1 million excluding real estate costs would impact nearly all prospective automobile dealer franchisees. NADA is concerned that this amount would ultimately result in an industry-wide exemption, which is something that we have consistently opposed. Also, simply because a prospective franchisee appears to be sophisticated due to their net worth or investment capacity, it does not mean that they should inevitably fall under the large investment exemption. A prospective franchisee may have limited business knowledge and be unaware of the risks involved in operating a franchise, and thus would benefit tremendously from receiving the information required by the Rule. Since the primary objective of the Rule is to ensure that franchisors provide prospective franchisees with essential and reliable information on their business history, track record, and on the terms of the proposed franchised relationship, NADA feels that allowing this type of exemption would negate the entire purpose of the Rule. Thus, we ask that the Commission consider either increasing the threshold amount substantially or eliminate this exemption in its final rule.

NADA appreciates the opportunity to comment on this matter.

Sincerely,

Smitha Koppuzha  
Staff Attorney